

***Notice of Child and
Family Rights***

in the

BabyNet System

AUGUST 2002

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Introduction

The Individuals with Disabilities Education Act (IDEA) is a federal law which includes provisions for early intervention services for eligible infants and toddlers (ages birth-36 months) with disabilities and their families. The provisions from Part C of IDEA are contained in federal regulations (34 *Code of Federal Regulations*, Section 303) and in State law (Act 41 of 1989).

In South Carolina, the Part C system is called BabyNet. The system is designed to maximize family involvement and ensure parental consent in each step of the early intervention process, beginning with determination of eligibility and continuing through service delivery and transition.

BabyNet includes safeguards (or rights) to protect eligible children and their parents. Parents must be informed about their rights so they can have a leadership role in the services provided to their family. *Notice of Child and Family Rights in the BabyNet System* is an official notice of the rights of eligible children and their families as defined under federal Part C regulations. Information about child and family rights is provided to families through BabyNet Service Coordinators.

Within the BabyNet System, you, as a parent, have the following rights:

- The right to a multidisciplinary evaluation and assessment and the development of an Individualized Family Service Plan (IFSP) within forty-five (45) calendar days from referral;
- If BabyNet eligible, the right to appropriate early intervention services for your child and family as addressed in an IFSP;
- The right to evaluation, assessment, IFSP development, service coordination, and procedural safeguards at no cost except for services related to autism;
- The right to refuse evaluations, assessments, and services;
- The right to be invited to and participate in all meetings in which a decision is expected to be made regarding a proposal to change the identification, evaluation, or placement of your child, or the provision of early intervention services to your child or family;

- The right to receive written timely notice before a change is proposed or refused in the identification, evaluation, or placement of your child, or in the provision of early intervention services to your child or family;
- The right for your child to receive services in natural environments to the maximum extent appropriate to meet his/her needs;
- The right to maintenance of the confidentiality of personally-identifiable information;
- The right to inspect and review and, if appropriate, amend records;
- The right to request mediation and/or impartial due process procedures to resolve parent/provider disagreements; and
- The right to file an administrative complaint.

In addition to the general rights noted above, you are to be notified of specific procedural safeguards under BabyNet. These rights are described below.

Parental Consent

Consent means that:

1. You have been fully informed of all information relevant to the activity(s) for which consent is sought, in your native language or other mode of communication;
Native Language, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of an eligible child.
2. You understand and agree in writing to the activity(s) for which your consent is sought, and the consent describes the activity(s) and lists the records (if any) that will be released and to whom; and
3. You understand that the granting of consent is voluntary on your part and may be revoked at any time.

Your written consent must be obtained before:

1. The initial evaluation and assessment of your child is conducted; and
2. Early intervention services are provided. If you do not consent, the BabyNet Service Coordinator shall make reasonable efforts to

ensure that you:

- a. Are fully aware of the nature of the evaluation and assessment or the services that would be available; and
- b. Understand that your child will not be able to receive the evaluation and assessment or services unless consent is given.

As the parent of a child BabyNet eligible child you may determine whether your child or other family members will accept or decline any early intervention service(s) under this program. You may also decline such a service after first accepting it without jeopardizing other early intervention services under this program.

Finally, you have the right to written notice of and written consent to the exchange among agencies of any personally identifiable information collected, used, or maintained by BabyNet, consistent with federal and state law.

Written Prior Notice

Written prior notice must be given to you within a reasonable time (7 calendar days) before a BabyNet Service Coordinator or BabyNet service provider proposes or refuses to initiate or change the identification, evaluation, or placement of your child or the provision of appropriate early intervention services to your child and your family. The notice must be sufficiently detailed to inform you about:

1. The action that is being proposed or refused;
2. The reasons for taking the action;
3. All procedural safeguards that are available under BabyNet; and
4. The state's complaint procedures, including a description of how to file a complaint and the timelines for those procedures.

The notice must be:

1. Written in language understandable to the general public and provided in your native language unless clearly not feasible to do so;
2. If your native language or other mode of communication is not a written language, the BabyNet Service Coordinator shall take steps to ensure that:

- a. The notice is translated orally or by other means to you in your native language or other mode of communication;
- b. You understand the notice;
- c. There is written evidence that the requirements of this section have been met; and
- d. If you are deaf, blind, unable to read this, or have no written language, the mode of communication must be that normally used by you (such as sign language, Braille, or oral communication).

Examination of Records

In accordance with the Confidentiality of Information procedures outlined in the next section of this booklet, you must be given the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints concerning your child, and any other area of the BabyNet System involving records about your child and your family.

Confidentiality of Information

BabyNet providers must permit you the opportunity to inspect and review any records relating to your child that are collected, maintained or used by BabyNet. The BabyNet provider must comply with a request without unnecessary delay and before any meeting regarding an IFSP or hearing relating to identification, evaluation, placement, or provision of services for your child and family and, in no case, more than forty-five (45) days after the request has been made.

The following definitions are used in this section: (1) "Destruction" means physical destruction or removal of personal identifiers from information that is no longer personally identifiable; (2) "Education records" or "records" means the records covered by Family Education Rights and Privacy Act (FERPA); and (3) "Participating agency" means any agency or institution which collects, maintains, or uses personally-identifiable information, or from which information is obtained, by BabyNet; (4) "Personally identifiable" means that information includes: (a) the name of the child, the child's parent, or other family member; (b) the address of the child; (c) a personal identifier, such as the child's or parent's social security number; or (d) a list of personal characteristics or other information that would make

it possible to identify the child with reasonable certainty.

The right to inspect and review records includes:

- The right to a response from a BabyNet provider to reasonable requests for explanations and interpretations of the record;
- The right to request that a BabyNet provider provide records containing the information if failure to provide those copies would effectively prevent you from exercising the right to inspect and review the records; and
- The right to have someone who is representing you inspect and review the record.

A BabyNet provider may presume that you have the authority to inspect and review records relating to your child unless the provider has been advised that you do not have the authority under applicable South Carolina law governing such matters as guardianship, separation and divorce.

Each BabyNet provider shall keep a record of parties obtaining access to education records collected, maintained or used by BabyNet (except access by parents and authorized employees of such agency or provider), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the record.

If any record includes information on more than one child, you have the right to inspect and review only the information relating to your child, or to be informed of that specific information.

Each BabyNet provider shall provide you, upon request, a list of the types and locations of records collected, maintained, or used by the agency or provider. A BabyNet provider may charge a fee for copies of records that are made for parents under Part C if the fee does not effectively prevent you from exercising your right to inspect and review those records. However, they may not charge a fee to search for or to retrieve BabyNet information.

If you believe that information in records collected, maintained, or used by BabyNet is inaccurate or misleading, or violates the privacy or other rights of your child or family, you may request that the BabyNet provider amend the information.

1. The BabyNet provider must decide whether to amend the information in accordance with the request within a reasonable period of time after it receives the request.
2. If the BabyNet provider refuses to amend the information as you request, you must be informed of the refusal and be advised of the right to a hearing.

The BabyNet provider on request must provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

1. If, as a result of the hearing, the BabyNet provider decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, they must amend the information accordingly and must inform you in writing.
2. If, as a result of the hearing, the BabyNet provider decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, you must be informed of your right to place in the records of your child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the BabyNet provider.

Any explanation placed in the records of your child under this section must:

- Be maintained by the BabyNet provider as part of the records of your child as long as the record or contested portion (that part of the record with which you disagree) is maintained by the BabyNet provider; and
- If the BabyNet provider discloses the records of your child or the contested portion, the explanation must also be disclosed.

A hearing held under this section must be conducted according to the procedures under the Family Education Rights & Privacy Act (FERPA), which is found in federal regulations at 34 CFR Part 99.22.

Parental consent must be obtained before personally identifiable information is:

1. Disclosed to anyone other than officials of the agency serving your child in collecting or using

information under Part C, unless authorized to do so under FERPA (34 CFR 99.31); or

2. Used for any purpose other than meeting a requirement for BabyNet.

Information from your child's early intervention record cannot be released without your consent unless the BabyNet provider is authorized to do so under FERPA. If you refuse to provide consent, the BabyNet provider may initiate due process procedures for resolving this disagreement.

The following safeguards must be in place to ensure confidentiality of records:

- Each BabyNet provider must protect the confidentiality of personally-identifiable information at collection, storage, disclosure, and destruction stages;
- Each BabyNet Service Coordinator is responsible for ensuring the confidentiality of any personally-identifiable information;
- All persons collecting or using personally identifiable information must receive training or instruction regarding state policies and procedures under Part C and FERPA;
- Each BabyNet provider must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally-identifiable information;
- The BabyNet provider must inform parents when personally-identifiable information collected, maintained, or used by BabyNet is no longer needed to provide services to the child; and
- The information must be destroyed, at the request of the parents. (Permanent records of your child's name, address, and phone number may be maintained without time limitation.)

Mediation and Due Process Hearings

If you disagree with a BabyNet provider on the identification, evaluation, placement of your child, or provision of appropriate early intervention services to your child or family, you have the right to a timely administrative resolution of your concerns.

BabyNet offers two (2) methods for resolving such disagreements both of which are available at no cost to families: mediation and impartial due

process hearings. The following is an overview of mediation and impartial due process hearings. For information on how to file a request for mediation and/or an impartial due process hearing, see Contact Information on Page 6.

Mediation

Mediation is voluntary and freely agreed to by both parties; parents/providers are not required to use it. Mediation, at a minimum, must be available whenever a due process hearing is requested. Mediation provides an opportunity for parents/providers to resolve their disagreements in a non-adversarial, informal manner. Only parents may request mediation. Mediation may not be used to deny or delay your rights to an impartial due process hearing or to deny any of your other rights under Part C.

About Mediators and Hearing Officers...

Mediators used in mediation (and hearing officers used in due process hearings, as described in the next section), must be "impartial." *Impartial* means that the person appointed to serve as a mediator (or hearing officer of the due process proceeding):

1. Is not an employee of any agency or program involved in providing early intervention services or care of the child; and
2. Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

A person who otherwise qualifies under this section is not an employee of an agency or program solely because the person is paid by the agency or program to implement the disagreement resolution process.

BabyNet will contact both parties to review the complaint and the mediation process, and to schedule a time and location for the mediation. Mediation sessions will be scheduled in a timely manner and held in a location that is convenient to both parties. A qualified and impartial mediator who is trained in effective mediation techniques will meet with both parties to help them find a solution to the complaint in an informal, non-adversarial atmosphere. BabyNet maintains a list of qualified mediators who are knowledgeable of the laws and regulations relating to the provision of early intervention services for infants and toddlers with disabilities and their families.

Any mediation agreement must be to the satisfaction of both parties. Both parties must sign the agreement and are given a copy of the written agreement at the end of the mediation. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent impartial due process hearings or civil proceedings, and the parties to the mediation may be required to sign a confidentiality pledge prior to the beginning of the process.

Impartial Due Process Hearings

An impartial due process hearing is a formal procedure conducted by an impartial hearing officer. Families seeking an impartial due process hearing must submit their request in writing directly to BabyNet. See Page 6 for contact information. The impartial due process hearing must be completed, and a written decision made, within thirty (30) days of the receipt of the request.

Hearing officers are appointed to conduct due process hearings. Hearing officers must:

1. Have knowledge about the provisions of Part C and the needs of, and services available for, eligible children and their families; and
2. Perform the following duties:
 - A. Listen to the presentation of relevant views about the complaint/ disagreement, examine all information relevant to the issues, and seek to reach a timely resolution of the disagreement; and
 - B. Provide a record of the proceedings, including a written decision.

Through BabyNet, you are given the rights listed below in any impartial due process hearing carried out under this section.

1. To be accompanied and advised by counsel and by individuals with special knowledge or training about early intervention services for children BabyNet eligible.
2. To present evidence and confront, cross examine, and to compel the attendance of witnesses;

3. To prohibit the introduction of any evidence at the proceedings that has not been disclosed to you at least five days before the proceeding;
4. To obtain a written or electronic verbatim transcription of the proceeding; and
5. To obtain written findings of fact and decisions.

Any proceedings for implementing the impartial due process hearing process in this section must be carried out at a time and place that is reasonably convenient to you.

No later than thirty (30) days after BabyNet receives your complaint, the impartial due process proceeding required under this section must be completed and a written decision must be mailed to each of the parties. Any party that does not agree with the findings and decision of the impartial due process hearing has the right to bring a civil action in state or federal court. During the time period (pendency) of any proceeding involving a disagreement (complaint), unless the BabyNet provider and you otherwise agree, your child and family will continue to receive the appropriate early intervention services currently being provided.

If the disagreement (complaint) involves an application for initial services, your child and family must receive those services that are not in dispute.

Administrative Complaints

In addition to mediation and due process hearings (discussed in the previous section), an individual or organization including those from another state may file a written signed complaint that any BabyNet provider is violating a requirement of the BabyNet System. The complaint must include a statement that a requirement of the Part C statute or regulations has been violated and a statement of the facts on which the complaint is based.

Administrative complaints must be filed with BabyNet within one (1) year of the alleged violation. Under certain circumstances, the period for filing the complaint may be longer:

- If the violation is still occurring for that child or other children; and/or
- If the person filing the complaint is requesting reimbursement or corrective action for a violation that occurred within three (3) years of filing the complaint.

Once BabyNet has received the complaint, it has sixty (60) calendar days (unless exceptional circumstances exist) to:

1. Investigate the complaint, including conducting an independent, on-site investigation, if necessary;
2. After reviewing all relevant information, make an independent determination as to whether or not a violation has occurred; and
3. Issue a written decision to the complainant that addresses each allegation in the complaint and that contains the facts and conclusions as well as the reasons for the final decision.

The individual or organization filing the complaint has the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. If the final decision indicates that appropriate services were/are not being provided, BabyNet must address how to remediate the denial of those services including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family. This must include procedures for effective implementation of the decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

BabyNet must also address appropriate future provisions of services for all infants and toddlers with disabilities and their families.

If a written complaint is received that is also the subject of a due process hearing or contains multiple issues of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.

However, any issue in the complaint that is not a part of the due process action must be resolved within the 60 calendar day timeline using the complaint procedures described in this section.

Complaints that have already been decided in an impartial due process hearing involving the same parties cannot be considered under this procedure. The State must notify the complainant that the hearing decision is binding. However, BabyNet must resolve complaints that are filed related to implementation of an impartial due process hearing decision.

Surrogate Parents

The rights of children eligible under BabyNet are protected even if:

1. No parent can be identified;
2. The BabyNet Service Coordinator, after reasonable efforts, cannot discover the whereabouts of a parent; or
3. The child is a ward of South Carolina pursuant to the laws of the State.

An individual is assigned to act as a "surrogate" for the parent according to the procedures that follow. The procedures include a method for determining whether a child needs a surrogate parent and assigning a surrogate to the child. The following criteria are employed when selecting surrogates:

1. Surrogate parents are selected in the manner authorized by BabyNet; and
2. A person selected as a surrogate parent:
 - A. Has no interest that conflicts with the interests of the child he or she represents;
 - B. Has knowledge and skills that ensure adequate representation of the child;
 - C. Is not an employee of any state agency; or a person or an employee of any person providing early intervention services to the child or to any family member of the child. A person who otherwise qualifies to be a surrogate parent under this section is not an employee solely because he or she is paid to serve as a surrogate parent; and
 - D. Resides in the same general geographic area as the child, whenever possible.

A surrogate parent may represent the child in all matters relating to:

- The evaluation and assessment of the child;
- Development and implementation of the child's IFSP, including annual evaluations and periodic reviews;
- The ongoing provision of early intervention services to the child; and
- Any other rights established under Part C.

Contact Information

To file a request for mediation, a due process hearing or to file an administrative complaint, or to find out more about these procedures, contact the State Lead Agency at:

DHEC/BabyNet
1751 Calhoun Street
Columbia, SC 29201
Phone #: **(803) 898-0781**
Fax #: **(803) 898-0613**

*You may also contact BabyNet through the DHEC Care Line at 1-800-868-0404.

Glossary

Assessment - The ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under Part C to identify:

1. The child's unique strengths and needs and the services appropriate to meet those needs;
2. The resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability; and
3. The nature and extent of early intervention services that are needed by the child and the child's family.

Disclosure - To permit access to or the release, transfer, or other communication of personally-identifiable information contained in education records, to any party, by any means, including oral, written, or electronic means.

Evaluation - The procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under Part C, consistent with the definition of "infants and toddlers with disabilities" in 34 CFR 303.16, including determining the status of the child in each of the developmental areas.

Family Assessment - Family assessments must be voluntary on the part of the family and must be family-directed and designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

IFSP - Individualized Family Service Plan (IFSP), a written plan for providing early intervention services to eligible children/families that:

- Is developed jointly by the family and appropriate, qualified personnel providing early intervention services;
- Is based on the multidisciplinary evaluation and assessment of the child and the assessment of the strengths and needs of the child's family, as determined by the family and as required in 34 CFR 303.322; and
- Includes services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child.

Mediation - A voluntary process freely agreed to by parents and providers to attempt to resolve BabyNet disagreements. Mediation, at a minimum, must be available to you whenever you request a due process hearing. Neither party is required to participate in the mediation process. Both parties must approve any agreement reached. Mediation may not be used to deny or delay your right to an impartial hearing or any of your other rights under Part C.

Multidisciplinary - The involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in 303.322 and development of the IFSP in 303.342 - 303.345.

Natural Environments - Settings that are natural or normal for your child's age peers who do not have a disability.

Parent - Includes:

1. A natural or adoptive parent of a child; a guardian; a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare);
2. A surrogate parent who has been assigned in accordance with Part C regulations Sec. 303.406; or,
3. If permitted by the state, a foster parent as long as:
 - A. The natural parents' authority to make the decisions required of parents under Part C has been extinguished under South Carolina law; and

B. The foster parent:

- 1) Has an ongoing, long-term parental relationship with the child;
- 2) Is willing to make the decisions required of parents under Part C; and
- 3) Has no interest that would conflict with the interests of the child.

Note: All citations contained in this glossary are references to 34 CFR Part 303.